IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

SECOND APPEAL NO. 1252 OF 2005

Bhiva Nana Wakde .... Petitioner

versus

Trimbak Sambahi Aware ..... Respondent.

Shri Nitin Jadhav h/f Nitin Jamdar for the petitioner
Shri Satyajit Mirajkar h/f G.S.Godbole for
respondents 1 to 7.

CORAM; A.P. DESHPANDE, J.
DATED; 18TH JULY, 2007

P.C.;

1. The present appellant is the original defendant against whom a suit for removal of encroachment and handing over possession had been passed. The trial court had dismissed the suit. Aggreived thereby the respondent filed an appeal. In the Appellate court, the present respondent filed an application at Exh. 15 for having the suit land measured with a view to find out the extent of encroachment. The court allowed the application and in pursuance thereof the surveyor filed measurment map at Exh.56. The said map showed encroachment of 15 ares. The present appellant objected to the said measurement by contending that a better method of meassurement is available known as ‘Nimtana measurement’ and hence prayed for passing

appropriate order to carry out the measurement in accordance with 'Nimtana measurement'. The appellate court permitted the measurement by the said method as well. A fresh map was prepared and filed in the court. In the said Nimtana measurement the encroachment was shown to the extent of 12 ares. Accepting the measurement carried out by the surveyor which is verified by the superior officer, the court has passed the decree for 12 acres.

2. The only objection that was taken to the measurement was that, the surveyor has carried out the measurement and T.I.L.R. has only verified the same. The appellant has failed to establish that the said survey carried out, needs to be rejected. In both the surveys, the encroachment has been established and the Nimtana survey was carried out on an application moved by the present appellant.

3. Perused the judgment of the first Appellate Court. The same does not call for any interference. There is no substantial question of law emerging for consideration in the second appeal. Hence second appeal is summarily dismissed.

4. In view of the above the C.A. is also dismissed.

...